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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/817,880

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Sean E. Trowbridge

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EXAMINER

RITTEN, JAMES D

ART UNIT

PAPER NUMBER

2192

MAIL DATE

DELIVERY MODE

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/817,880

Applicant(s)

TROWBRIDGE, SEAN E.

Examiner

J. Derek Rutten

Art Unit

2192

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.


Continuation of 11. does NOT place the application in condition for allowance because:

On page 8 of the response, Applicant addresses the rejections under 35 U.S.C. § 101. Applicant argues that claim 19 is dependent upon statutory claim 1, so claim 19 should also be statutory. However, claim 19 is directed to "A computer-readable medium," and therefore is not dependent upon the system of claim 1. As suggested on page 4 of the 10/16/06 action, the computer-readable medium is not limited to tangible embodiments and is thus nonstatutory.

The amendment of claim 30 does not remedy the fact that the claim is drawn to a "signal" which is not regarded as statutory subject matter as explained on page 4 of the 10/16/2006 mailing. The rejection of claim 30 under 35 U.S.C. § 101 is maintained.

The amendment to claim 33 (drawn to a "computer implemented system") appears to inherently provide statutory subject matter since the execution engine provides the active step of selecting (see last clause of claim 33), which could only be accomplished through the use of physical computer components in a real world system. The rejection of claim 33 under 35 U.S.C. § 101 is withdrawn.

Applicant essentially argues with regard to the claim rejections under 35 U.S.C. § 103(a) (see pages 9-11) that the Breslau, Spyker, and Armstrong references fail to teach logging information at runtime according to a particular user. However, these references were not relied upon to teach this feature. It is noted with appreciation that the Applicant has corrected inferred the inclusion of the Knight reference (USPN 6126330) in the rejection of claims 1, 2, 5-17, 19, 30, and 31, as made clear on page 2 paragraph 2 of the 10/16/06 mailing and in the text of the rejection itself. Applicant further argues that the input file disclosed by the Knight reference does not make up for the alleged deficiencies of Breslau, Spyker, and Armstrong, since a user is involved with creation of the file information. However, the plain language of the claim calls for "the runtime logged information includes at least a set of information related to a particular user." At the bottom of page 10, Applicant admits: "This input file is [sic] does not contain runtime feedback from the user unless the developer has manually put this information into the file." Applicant admits that the input file contains runtime information, and Knight's teaching of an input file (among other teachings, e.g. column 3 lines 51-58, column 6 lines 22-27, and column 6 line 66 – column 7 line 9) meets the claim limitations. Therefore, the rejections are maintained. Further arguments on pages 11-15 essentially rely on the same reasoning presented previously, and the rejections are likewise maintained.



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